

ISSUE DATE: September 19, 1997

DOCKET NO. P-407, 421/M-97-930

ORDER REJECTING INTERCONNECTION AGREEMENT AND DIRECTING REVISED  
FILING

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey  
Joel Jacobs  
Marshall Johnson  
Gregory Scott  
Don Storm

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Application for Approval  
of the Interconnection Agreement Between  
Contel of Minnesota, Inc. d/b/a GTE  
Minnesota and US WEST Communications,  
Inc.

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**PROCEDURAL HISTORY**

On June 23, 1997, US WEST Communications, Inc. (USWC) and Contel of Minnesota, Incorporated d/b/a GTE Minnesota (GTE) filed a proposed Interconnection Agreement (Agreement) with the Commission for approval pursuant to Section 252(e) of the Federal Telecommunications Act of 1996. The Agreement covers services in the Wyoming, Minnesota exchange only. The agreement was arrived at through negotiation between the two companies (Parties) and provides the necessary provisions for USWC and GTE to interconnect their facilities and exchange traffic.

On June 26, 1997, the Commission issued a Notice of Comment Period.

On July 18, 1997, the Minnesota Department of Public Service (the Department) filed comments on the parties' petition.

On July 28, 1997, USWC filed reply comments.

The Commission met on September 9, 1997 to consider this matter.

**FINDINGS AND CONCLUSIONS**

**I. The Parties to the Proposed Agreement: USWC and GTE**

USWC and GTE filed a proposed Interconnection Agreement (Agreement) with the Commission for approval pursuant to Section 252(e) of the Federal Telecommunications Act of 1996. The Parties' Agreement was arrived at through negotiation and provides the necessary provisions for USWC and GTE to interconnect their facilities and exchange traffic. The Agreement (and hence the scope of this Order) is unusually narrow, covering services in the

Wyoming, Minnesota exchange only.

In its reply comments, USWC asserted that the Agreement neither discriminates against another telecommunications carrier nor contains terms that are inconsistent with the public interest. USWC argued that the Commission's role in the context of voluntary negotiations is limited to reviewing the agreement and approving or rejecting it in the light of two narrow standards, neither of which supports the modifications to the Agreement requested by the Department. USWC argued that the changes proposed by the Department are inconsistent with the limited scope of review for negotiated agreements under the Act. USWC also noted that, while section 252(e)(3) of the Act preserves the Commission's authority to enforce other requirements of state law in its review of arbitrated or negotiated agreements, the Commission's authority in this regard is subject to Section 253 of the Act, which does not permit the state to permit or impose any statutes, regulations, or legal requirements that prohibit or have the effect of prohibiting market entry.

## **II. The Department's Comments**

The Department recommended rejection of the agreement and recommended additional or alternative language for six sections of the Agreement. The Department indicated that if the parties were to make the recommended changes to the agreement, it would recommend approval. The sections identified by the Department and recommended changes are addressed in the following section.

## **III. Commission Analysis**

Section 252(e) of the Act requires state commission approval of interconnection agreements adopted by arbitration or negotiation. The state commission may only reject a negotiated agreement, with written findings as to deficiencies, based on the following criteria:

- (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
- (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity . . .

In this light, there are several provisions of the proposed Agreement that warrant particular discussion:

### **A. Commission Notification in Event of Default**

Article III, Section 2.3 of the Parties' proposed interconnection agreement provides for termination of the contract in the event of a default by either party. The Department recommended that language be added to allow for the Commission to be notified by any party desiring to terminate the agreement.

USWC responded that this change is unnecessary and inconsistent with the Commission's role under the 1996 Act. USWC stated, however, that it was willing to make the change if required

for Commission approval.

The Commission finds that the proposed language in Article III, Section 2.3 constitutes grounds to reject the Agreement because it is not consistent with the public interest, convenience and necessity. The Commission notes that incorporating the following underlined language would correct the deficiency:

Either party may terminate this Agreement in whole or in part in the event of a default by the other party; provided, however, that the nondefaulting Party notifies the defaulting party and the Minnesota Public Utilities Commission in writing of the alleged default ....

See the Commission's recent decision on this point in In the Matter of an Application for Approval of an Interconnection Agreement Between NEXTEL Communications, Inc. and Contel of Minnesota d/b/a GTE-Minnesota, Docket No. P-407/EM-97-910, ORDER REJECTING INTERCONNECTION AGREEMENT AND DIRECTING REVISED FILING (September 16, 1997) at page 2.

#### **B. Commission Approval of Changes to the Agreement**

Article III, Section 3 deals with amendments, modifications, or supplements to the Agreement. The Department recommended that the Agreement should specify that the Commission must approve any amendments to the Agreement. The Department noted that the Commission has required this provision in other contracts and recommended the following language be added:

Any amendment to this Agreement shall be submitted to the Commission for approval.

USWC stated that this change is unnecessary and inconsistent with the Commission's role under the 1996 Act, but indicated its willingness to make the change if required for Commission approval.

The Commission finds the proposed language in Article III, 3 constitutes grounds to reject the Agreement because it is not consistent with the public interest, convenience and necessity. The Commission notes that the language proposed by the Department (see above) would correct the deficiency.

For a similar result on this issue, see the Commission's September 16, 1997 Order in Docket No. P-407/EM-97-910 regarding the Nextel/GTE Interconnection Agreement.

### **C. Notice of Assignment**

Article III, Section 4 deals with assignments of rights, obligations, and duties under the Agreement. The Department noted that in the USWC/Sprint agreement (Docket No. P-466,421/M-96-1097), the Commission required that it be notified of any assignments under the agreement. The Department recommended inclusion of the following language:

The party making the assignment shall notify the Commission 60 days in advance of the effective date of the assignment.

USWC stated that this change is unnecessary and inconsistent with the Commission's role under the 1996 Act, but it indicated its willingness to make the change if required for Commission approval.

The Commission finds that the proposed language in Article III, 4 constitutes grounds to reject the Agreement because it is not consistent with the public interest, convenience and necessity. The Commission notes that it has ordered similar notice provisions in previous agreements between USWC and Sprint Spectrum in Docket No. P-466, 421/M-96-1097 and between Nextel and GTE in Docket No. P-407/EM-97-910. The Commission notes that incorporating the Department's proposed language (see above) would correct the deficiency.

### **D. Provision of Confidential Customer Information**

Article III, Section 10.1 of the proposed Agreement would permit the parties to provide each other with confidential customer information. The Department noted that certain sections of federal law restrict the circumstances under which customer billing name and address may be provided to a third party and argued that the public interest requires nondisclosure of other customer information, without a customer's consent, in addition to billing name and address. The Department initially recommended that the word "customer" be stricken from this section of the agreement.

USWC argued that the Department's recommended change was unnecessary and potentially detrimental. USWC argued that this provision of the contract is subject to applicable legal requirements and referenced sections of the Agreement addressing Governing Law, Regulatory Agency Control, Changes in Legal Requirements, and Regulatory Matters. USWC further argued that the Department's recommendation might prevent a new carrier from obtaining information from the former carrier that is needed to properly provision service.

The Commission finds that the proposed language in Article III, 10.1 constitutes grounds to reject the Agreement because, as initially proposed by the Parties, the section is not consistent with the public interest, convenience and necessity. The Commission notes that the sentence revision proposed by GTE and approved by the Commission on this subject in the Sprint Spectrum and Nextel Orders would provide sufficient customer confidentiality protections within the Agreement and would correct the deficiency identified by the Department. The approved language (in bold) causes the first sentence of the article to read as follows:

**To the extent permitted by C.F.R. 64.1201(e)(2) and 64.1201(e)(3) and applicable law, either Party may disclose to the other proprietary or confidential customer....**

**E. The Commission's Third Party Beneficiary Status**

Article III, Section 25 of the Parties' proposed Agreement contains language which indicates that there are no third party beneficiaries to the Agreement. The Department recommended that the Commission require language modifications to this section, as it had in previous agreements, to clarify the Commission's intervenor status.

GTE opposed the Department's recommendation for the same reasons stated in previous dockets on this issue. GTE argued that it was not appropriate to grant third-party beneficiary status to any third-party under a commercial agreement. GTE stated that the Commission could adequately protect the public interest without having third-party status. However, GTE also did not voluntarily renounce its rights to oppose the Commission's intervention in any matter involving the interconnection agreement and denied that the Commission had the authority to require GTE to agree in the interconnection agreement that it would not oppose the Commission's intervention.

USWC, likewise argued, as it had in previous dockets, that the Commission's role is defined by Minnesota Law or contract law in general. USWC asserted that making the Commission a third party to this Agreement raises fundamental conflict of interest questions. According to USWC, the Commission may be a party to any lawsuit as a result of a complaint filed by one of the parties or because the court may refer the dispute back to the Commission. USWC argued that the Commission cannot be a party to the Agreement and at the same time a decision maker with respect to the terms of the Agreement.

USWC also argued that to include the Commission in the notice provision could involve the Commission in unnecessary and potentially burdensome administrative matters between the parties.

The Commission finds that the proposed language in Article III, 25 constitutes grounds to reject the Agreement because it is not consistent with the public interest, convenience and necessity.

Regarding its third-party status and intervention rights, the Commission affirms what it has previously stated:

This [interconnection] agreement is made for the benefit of the public and the Commission should have the option to intervene in litigation regarding this agreement if it decides it is necessary to protect the public interest.<sup>1</sup>

The essence of the Commission's concern has been to assure the recognition of its intervention rights in order to avoid waste of regulatory resources dealing with opposition to its intervention in any proceeding involving these interconnection agreements. The Commission finds that

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<sup>1</sup> See In the Matter of AT&T Communications of the Midwest, Inc.'s Petition for Arbitration with Contel of Minnesota, Inc. d/b/a GTE Minnesota under Section 252(b) of the Federal Telecommunications Act of 1996, Docket No. P-442,407/M-96-939, ORDER RESOLVING ISSUES AFTER RECONSIDERATION AND APPROVING INTERCONNECTION AGREEMENT (March 14, 1997) at page 61.

appropriate language to address this concern is as follows:

Parties recognize that the MPUC considers itself a third party beneficiary on behalf of the public. Accordingly, parties agree to give notice to the Commission of any lawsuits or other proceedings that involve or arise under the agreement and further agree not to oppose any petitions by the Commission to intervene in any such proceedings on behalf of the public interest.

The Companies' proposed provision, which does not contain the above-cited language, is not consistent with the public interest. By remaining silent regarding the Commission's intervention in any lawsuits or other proceedings that involve or arise under the agreement, the Companies would be retaining the potential to oppose the Commission's intervention in such proceedings. Here, as in other dockets, the Companies have failed to cite an instance in which their opposition to the Commission's intervention in a proceeding involving this Agreement would be justified. The Commission finds that it is in the public interest to remove the possibility that the Companies would require the Commission to expend any of its regulatory resources overcoming opposition to the Commission's motion to intervene in such a proceeding. Commission notes that its decision on this point is consistent with its decision in several previous interconnection agreement dockets.

USWC's comments regarding conflict of interest miss the mark and warrant specific comment. The point of the language approved by the Commission, of course, is not to secure benefits or services for the Commission under the Agreement but to exercise prudent stewardship of its regulatory resources on behalf of the public interest, i.e. not being forced to expend scarce regulatory resources defending its rightful intervention in matters involving this Interconnection Agreement.

#### **F. Commission's Address**

Article III, Section 26 provides the business address to be used for any notices provided under the agreement. The Department recommended that the article include the address of the Commission.

USWC asserted that this change is unnecessary and inconsistent with the Commission's role under the 1996 Act. However, it indicated its willingness to make the change if required for Commission approval.

The Commission finds that the proposed language in Article III, Section 26 constitutes grounds to reject the Agreement because it is not consistent with the public interest, convenience and necessity. The Commission notes that incorporating language as recommended by the Department would correct the deficiency.

#### **IV. Commission Action**

Consistent with its analysis in the forgoing section, the Commission will reject the Companies'

proposed Interconnection Agreement and require the Parties to file a revised Agreement responding to the Commission's findings of deficiencies within two weeks of the service date of this Order.

The Commission will delegate authority to the Executive Secretary to examine the revisions filed by the Parties, confirm that the deficiencies have been corrected as recommended, and to issue a letter to the Parties approving the revised Agreement as of the date of filing.

If the Parties do not reach an agreement that addresses the Commission's findings of deficiencies, the parties should inform the Commission of that within two weeks of this Order.

### **ORDER**

1. The USWC/GTE Interconnection Agreement filed with the Commission on June 23, 1997 regarding the exchange of local traffic between USWC and GTE within GTE's Wyoming exchange that USWC's amended service area overlaps is rejected for reasons set forth in **Section III** of this Order.
2. If within two weeks of this Order, USWC and GTE refile (for approval under Section 252(e) of the Act) an Agreement that corrects the deficiencies identified by the Commission, the corrected contract shall be effective on the date the Parties file a conforming Agreement.
3. If the Parties do not reach an agreement that addresses the Commission's findings of deficiencies, the parties should inform the Commission of that within two weeks of the Commission's Order.
4. The Commission hereby delegates to its Executive Secretary the authority to determine whether or not the revised agreement corrects the deficiencies noted in this Order. If the Executive Secretary finds the contract properly revised, he shall have the authority to send the parties a letter confirming Commission approval of the contract and the effective date of the contract, i.e. the date the properly revised Agreement was filed with the Commission. In the event that the Executive Secretary determines that the revised contract does not comply with the Commission's directives, the matter will be brought before the Commission for review.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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